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STATUTORY INSTRUMENTS

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**2017 No. 396**

**TAX CREDITS**

**The Tax Credits (Definition and Calculation of Income) (Amendment) Regulations 2017**

<i>Made</i>	- - - -	<i>14th March 2017</i>
<i>Laid before Parliament</i>		<i>15th March 2017</i>
<i>Coming into force</i>	- -	<i>6th April 2017</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 7(8), 65(1), (7) and (9) and 67 of the Tax Credits Act 2002<sup>(1)</sup>.

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Tax Credits (Definition and Calculation of Income) (Amendment) Regulations 2017 and come into force on 6th April 2017.

(2) These Regulations have effect in relation to awards of tax credit for the tax year 2017-18 and subsequent tax years.

**Amendment of the Tax Credits (Definition and Calculation of Income) Regulations 2002**

2. The Tax Credits (Definition and Calculation of Income) Regulations 2002<sup>(2)</sup> are amended as follows.

3. In regulation 4 (employment income)—

(a) in paragraph (1)—

(i) in sub-paragraphs (c) and (e)<sup>(3)</sup> after “ITEPA” insert “or, where there is an optional remuneration arrangement, the relevant amount,”,

(ii) in sub-paragraph (d) after “ITEPA” insert “or, where such a credit-token is provided pursuant to an optional remuneration arrangement, the relevant amount”, and

(iii) after sub-paragraph (i) insert—

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(1) 2002 c. 21. Section 67 is cited because of the meaning it ascribes to “prescribed”.

(2) S.I. 2002/2006 (the principal Regulations); relevant amending instruments are S.I. 2003/732, 2003/2815, 2006/766, 2007/824, 2007/1305 and 2010/751.

(3) Paragraph 1(c) to (e) have been amended by regulation 6 of S.I. 2003/732. “ITEPA” is defined in regulation 2 of the principal Regulations as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1). The definition was inserted by regulation 4 of S.I. 2003/732.

- “(ia) “the relevant amount in cases where a car is made available to the claimant or a member of the claimant’s family pursuant to an optional remuneration arrangement where the car’s CO<sub>2</sub> emissions figure exceeds 75 grams per kilometre;”;
- (b) in paragraph (4) after “disregarded” insert “except where the payment or benefit is provided pursuant to optional remuneration arrangements and is neither a special case benefit nor an excluded benefit”, and
- (c) after paragraph (5) insert—
- “(6) For the purposes of this regulation, a benefit is provided pursuant to optional remuneration arrangements if it is provided under either—
- (a) arrangements under which, in return for the benefit, the claimant gives up the right (or a future right) to receive an amount of earnings within Chapter 1 of Part 3 of ITEPA (“Type A arrangements”), or
- (b) arrangements (other than Type A arrangements) under which the claimant agrees to be provided with the benefit rather than an amount of earnings within Chapter 1 of Part 3 of ITEPA.
- (7) The relevant amount, in relation to a benefit provided pursuant to an optional remuneration arrangement, means the amount treated for income tax purposes as earnings from employment for the tax year by reason of the benefit being provided pursuant to optional remuneration arrangements.
- (8) A benefit is a special case benefit if it is exempted from a charge to income tax by any of the following provisions in ITEPA—
- (a) section 289A (exemption for paid or reimbursed expenses)(4),
- (b) section 289D (exemption for other benefits)(5),
- (c) section 308B (independent advice in respect of conversions and transfers of pension scheme benefits)(6),
- (d) section 312A (limited exemption for qualifying bonus payments)(7),
- (e) section 317 (subsidised meals)(8),
- (f) section 320C (recommended medical treatment)(9), and
- (g) section 323A (trivial benefits provided by employers)(10).
- (9) A benefit is an excluded benefit if—
- (a) it is exempted from a charge to income tax by any of the following provisions in ITEPA—
- (i) section 239 (payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles)(11),
- (ii) section 244 (cycles and cyclist’s safety equipment)(12),

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(4) Section 289A was inserted by section 11 of the Finance Act 2015 (c. 11).

(5) Section 289D was also inserted by section 11 of the Finance Act 2015.

(6) Section 308B was inserted by section 54 of the Pension Schemes Act 2015 (c. 8).

(7) Section 312A was inserted by paragraph 5 of Schedule 37 to the Finance Act 2014 (c. 26).

(8) Section 317 has been amended by paragraph 1 of Schedule 17 to the Finance Act 2004 (c. 12) and section 60 of Finance Act 2010 (c. 13).

(9) Section 320C was inserted by section 12 of the Finance Act 2014.

(10) Section 323A was inserted by section 13 of the Finance Act 2016 (c. 24).

(11) Section 239 has been amended by section 48 of Finance Act 2008 (c. 9) and paragraph 14 of Schedule 1 to the Finance Act 2015.

(12) Section 244 has been amended by section 16 of the Finance Act 2005 (c. 7).

- (iii) section 266(2)(c) (non-cash voucher regarding entitlement to exemption under section 244),
  - (iv) section 270A (limited exemption for qualifying childcare vouchers)(13),
  - (v) section 308 (exemption of contribution to registered pension scheme)(14),
  - (vi) section 308A (exemption of contribution to overseas pension scheme)(15),
  - (vii) section 309 (limited exemptions for statutory redundancy payments),
  - (viii) section 310 (counselling and other outplacement services)(16),
  - (ix) section 311 (retraining courses)(17),
  - (x) section 318 (childcare: exemption for employer-provided care)(18), or
  - (xi) section 318A (childcare: limited exemption for other care)(19), or
- (b) it is a payment, or reimbursement of costs incurred by the claimant, in respect of pension advice and that payment or reimbursement is exempt from a charge to income tax under Chapter 9 of Part 4 of ITEPA.

(10) A car's CO<sub>2</sub> emissions figure is to be determined in accordance with sections 133 to 138 of ITEPA (cars: the appropriate percentage)(20)."

4. In regulation 10 (investment income) in Table 4 (payments to be disregarded in the calculation of investment income)(21) after entry 14 insert—

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"15. Any payment of, or in respect of, The whole amount."  
a government bonus under section 1 of  
the Savings (Government Contributions) Act  
2017(22).

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5. In regulation 11 (property income) after paragraph (2)(23) insert—

"(2A) In calculating property income, the restrictions in section 272A of ITTOIA (restricting deductions for finance costs related to residential property)(24) and section 399A of ITA (property partnerships: restriction of relief for investment loan interest)(25) shall be disregarded."

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- (13) Section 270A was inserted by paragraph 3 of Schedule 13 to the Finance Act 2004.
- (14) Section 308 has been amended by section 201 of the Finance Act 2004 and section 11 of the Finance Act 2013 (c. 29).
- (15) Section 308A was inserted by paragraph 3 of Schedule 33 to the Finance Act 2004.
- (16) Section 310 has been amended by section 18 of, and Part 2 of Schedule 11 to, the Finance Act 2005.
- (17) Section 311 has been amended by section 18 of, and Part 2 of Schedule 11 to, the Finance Act 2005.
- (18) Sections 318 to 318D were substituted for section 318 by paragraph 1 of Schedule 13 to the Finance Act 2004.
- (19) Sections 318 to 318D were substituted for section 318 by paragraph 1 of Schedule 13 to the Finance Act 2004.
- (20) Section 133 has been amended by section 24 of the Finance Act 2014.
- (21) Table 4 has been amended by regulation 9 of S.I. 2003/732, regulation 8 of S.I. 2003/2815, regulation 14 of S.I. 2006/766, regulation 12 of S.I. 2007/824 and regulation 14 of S.I. 2010/751, which inserted entry 14.
- (22) 2017 c. 2.
- (23) Paragraph 2 was inserted by regulation 15 of S.I. 2006/766.
- (24) 2005 c. 5. Section 272A was inserted by section 24 of the Finance (No. 2) Act 2015 (c. 33). "ITTOIA" is defined in regulation 2 of the principal Regulations as meaning the Income Tax (Trading and Other Income) Act 2005. The definition was inserted by regulation 7 of S.I. 2006/766.
- (25) 2007 c. 3. Section 399A was inserted by section 24 of the Finance (No. 2) Act 2015. "ITA" is defined in regulation 2 of the principal Regulations as meaning the Income Tax Act 2007 (c. 3). The definition was inserted by regulation 3 of S.I. 2007/1305.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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14th March 2017

*David Evennett*  
*Robert Syms*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Income Tax (Definition and Calculation of Income) Regulations 2002 (S. I. 2002/2006) (the principal Regulations) which define what is income for the purposes of child tax credit and working tax credit under the Tax Credits Act 2002 (c. 21).

Regulation 1 provides for citation, commencement and effect and regulation 2 introduces the amendments to the principal Regulations.

Regulation 3 amends regulation 4 of the principal Regulations which sets out the extent to which a claimant's employment income is to be taken into account for the purposes of regulation 3 of the principal Regulations. Where a claimant receives a benefit and that benefit is provided pursuant to optional remuneration arrangements (defined in new paragraph (6)), the amount of the earnings to be taken into account will be an amount which includes the value of the earnings that have been given up as a consequence of optional remuneration arrangements (the relevant amount, defined in new paragraph 7). The payments and benefits listed in Table 1 in regulation 4(4) of the principal Regulations are disregarded in calculating employment income. The Regulations amend regulation 4(4) so that where the benefit or payment is provided pursuant to optional remuneration arrangements, it is taken into account unless it is a special case benefit (identified in new paragraph (8)) or an excluded benefit (identified in new paragraph (9)).

Regulation 4 amends Table 4 in regulation 10 of the principal Regulations which sets out the extent to which a claimant's investment income is to be disregarded in the calculation of investment income for the purposes of regulation 3 of the principal Regulations. The regulation inserts a reference to the government bonus paid under section 1 of the Savings (Government Contributions) Act 2017 (c. 2).

Regulation 5 amends regulation 11 of the principal Regulations which sets out the extent to which a claimant's income from property is to be taken into account for the purposes of regulation 3 of the principal Regulations. The regulation disapplies the restrictions in section 272A of the Income Tax (Trading and Other Income) Act 2005 (c. 5) and in section 399A of the Income Tax Act 2007 (c. 3) on the deduction of finance costs related to residential properties.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.